

Thomas M. Downey (CSBN 142096)  
Sara J. Savage (CSBN 199344)  
BURNHAM BROWN  
A Professional Law Corporation  
1901 Harrison Street, Suite 1400  
Oakland, California 94612-3523  
Telephone: (510) 444-6800  
Facsimile: (510) 835-6666  
Email: tdowney@burnhambrown.com  
ssavage@burnhambrown.com

Attorneys for Plaintiffs  
CERTAIN UNDERWRITERS AT LLOYD'S, LONDON

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON,

Plaintiffs,

v.

UNITED REVOLVER CLUB OF  
SACRAMENTO, INC., a California  
Corporation,

Defendant.

No. \_\_\_\_\_

**CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON COMPLAINT  
FOR DECLARATORY RELIEF**

///

///

///

///

///

///

///

///

1 Plaintiffs, those CERTAIN UNDERWRITERS AT LLOYD’S, LONDON  
2 (“Underwriters”) subscribing to insurance policies numbered L200615799, L200715799,  
3 L200815799, L200915799, LM201043526, and LM201143526, by their attorneys, and for their  
4 Complaint for Declaratory Judgment against defendant UNITED REVOLVER CLUB OF  
5 SACRAMENTO, INC. (“URC”), allege as follows:

6 **INTRODUCTION**

7 1. This is an action pursuant to 28 U.S.C. § 2201 seeking a judicial determination  
8 that no insurance coverage exists under the above-referenced insurance policies for claims  
9 asserted against URC in two state court actions pending in the Superior Court of California for  
10 the County of Sacramento styled *Willis v. City of Sacramento, et al.*, bearing case number 34-  
11 2015-00185035 (“**Willis Action**”) and *Gosling v City of Sacramento, et al.*, bearing case number  
12 34-2016-00194832 (“**Gosling Action**”), which have been consolidated and are referred to herein  
13 as the “Consolidated Action.” A copy of the Complaint filed in the **Willis Action** is attached as  
14 **Exhibit A** and a copy of the Complaint filed in the **Gosling Action** is attached as **Exhibit B**.

15 2. Underwriters issued six (6) substantively identical commercial general liability  
16 insurance policies to URC which cover consecutive, one-year policy periods from June 8, 2006  
17 through June 8, 2012, respectively (the “Policies”).<sup>1</sup> A true and correct copy of Policy  
18 LM201043526 with effective dates of June 8, 2010 to June 8, 2011, which contains substantially  
19 identical terms and provisions as all other Policies, is attached as **Exhibit C** as an exemplar.

20 3. Each of the six consecutive policies contain \$1 million per occurrence and \$2  
21 million aggregate limits of liability.

22 4. Plaintiffs in the Consolidated Action commenced their lawsuits against the City  
23 of Sacramento (“the City”), URC and others alleging they suffered bodily injury through  
24 exposure to lead, lead dust, and lead particulates from June 2004 through January 18, 2015. The  
25 Consolidated Action further alleges that the harmful exposure occurred at a shooting range  
26  
27

28 <sup>1</sup> The 2011-2012 Policy, No. LM201143526, was cancelled mid-term at the request of URC.

1 known as the James Mangan Rifle & Pistol Range (the “Gun Range”) and at the homes of the  
2 individuals that visited the shooting range.

3 5. As a result of the injuries, the Plaintiffs in the Consolidated Action allege that  
4 they sustained permanent disability, general damages, past and future medical expenses, past and  
5 future loss of earnings and loss of consortium.

6 6. Underwriters are participating in the defense of URC in the Consolidated Action  
7 subject to a full and complete reservation of rights, including the right to seek reimbursement of  
8 all sums paid to defend URC in the Consolidated Action and the right to withdraw from the  
9 defense of URC in the Consolidated Action.

10 7. Underwriters’ Policies contain a “Lead Contamination Exclusion” that broadly  
11 precludes coverage for bodily injury arising out of exposure to “any form of lead.”

12 8. Lead, lead dust, and lead particulates constitute “any form of lead” under  
13 Underwriters’ Policies.

14 9. Underwriters’ Policies also contain a “Pollution Exclusion” that excludes  
15 coverage for bodily injury from alleged or threatened discharge, dispersal, seepage, migration,  
16 release or escape of “pollutants,” a term defined in part by the Policies to mean “any solid,  
17 liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids,  
18 alkalis, chemicals and waste.”

19 10. Lead, lead dust, and lead particulates constitute “pollutants” under Underwriters’  
20 Policies.

21 11. Plaintiffs in the Consolidated Action have admitted under oath that their alleged  
22 injuries arose solely from exposure to lead, lead dust, and lead particulates.

23 12. As a result, there is no potential for coverage under Underwriters’ Policies for the  
24 Consolidated Action because, among other things, any damages awarded to plaintiffs would be  
25 for bodily injury excluded by the Policies’ Lead Contamination Exclusion and/or Pollution  
26 Exclusion.

27 13. Therefore, Underwriters seek a declaratory judgment that no insurance coverage  
28 exists under the Policies for the claims asserted against URC in the Consolidated Action and that

1 Underwriters have no duty to defend or indemnify URC. Underwriters also seek a declaratory  
2 judgment that Underwriters are entitled to withdraw the defense they are currently providing  
3 URC.

4 14. Finally, Underwriters seek an award for reimbursement of the full amount of  
5 legal fees and costs paid by Underwriters to defend URC in the Consolidated Action.

6 **THE PARTIES**

7 15. Plaintiffs Certain Underwriters at Lloyd's, London are individual foreign  
8 syndicates organized under the laws of the United Kingdom who underwrite insurance through  
9 managing agencies also organized under the laws of the United Kingdom, who in turn trade  
10 through the Lloyd's insurance market.

11 16. Each of the syndicates and their managing agencies' principal places of business  
12 are located in the United Kingdom. None of the syndicates nor their managing agencies have  
13 offices or other locations in the State of California.

14 17. Each of the syndicates (and their managing agents) share a proportion of the risk  
15 on each insurance policy issued to URC. Based upon information and belief, each of the  
16 members of the syndicates' potential risk associated with both the *Willis Action* and *Gosling*  
17 *Action* exceed \$75,000.00.

18 18. Upon information and belief, Defendant United Revolver Club of Sacramento,  
19 Inc. is a California corporation formed pursuant to California law, with its principal place of  
20 business located in the County of Sacramento, California, and is a citizen of the State of  
21 California.

22 **JURISDICTION AND VENUE**

23 19. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.  
24 § 1332(a)(1) because (a) Underwriters are citizens of a foreign state (United Kingdom) and URC  
25 is a citizen of California, and (b) the amount in controversy exceeds \$75,000, exclusive of  
26 interest and costs.

27 20. Pursuant to 28 U.S.C. § 1391(a)(2), venue is appropriate in the Eastern District of  
28 California because jurisdiction is founded upon diversity of citizenship, and the events giving

1 rise to the claims asserted in the Consolidated Action occurred in the Eastern District of  
2 California.

3 **CONSOLIDATED ACTION**

4 21. Plaintiffs in the Consolidated Action allege that they suffered bodily injury  
5 through exposure to lead and other toxic and hazardous materials associated with the Gun Range  
6 and have alleged egregious bodily harm based upon the release of pollutants from the Gun  
7 Range.

8 22. Plaintiffs in the Consolidated Action allege that the defendants were and are the  
9 owners, occupants, maintainers, inspectors, operators, equipment providers, lessees, safety  
10 equipment providers, proprietors and/or managers of the Gun Range. URC, plaintiffs allege,  
11 controlled, and was responsible for the use, maintenance, repair, inspection, supervision, set up,  
12 staging, and preparation of the Gun Range.

13 23. Plaintiffs in the Consolidated Action further allege that URC and other  
14 defendants failed to adopt and/or implement adequate procedures for work on the subject  
15 properties and adjacent and nearby public properties and easements, permitting them to be in a  
16 dangerous, defective and hazardous condition in an area that allowed for the lawful passage of  
17 persons, so as to create dangerous conditions of the properties.

18 24. Plaintiffs in the Consolidated Action allege that defendants had notice of these  
19 conditions and wrongfully failed to correct them, including failing to adequately ventilate the  
20 Gun Range. Plaintiffs further allege that from August 1, 2010 through January 18, 2015, they  
21 were exposed to lead and other pollutants at the Gun Range, as well as at their home due to the  
22 alleged migration of such materials on their clothing.<sup>2</sup>

23 25. Plaintiffs in the Consolidated Action claim that the defective and hazardous  
24 conditions at the subject properties caused plaintiffs to suffer lead poisoning, and were a  
25 substantial factor in bringing about injuries and damages to them. The injuries allegedly  
26 sustained by the Plaintiffs in the Consolidated Action included “injury to their bodies and shock  
27

28 <sup>2</sup> One Plaintiff, Kenneth Gosling, alleges his exposure dates back to June 2004.

1 and injury to their respective nervous systems and persons, all of which said injuries have caused  
2 and continued to cause said plaintiffs great mental, physical and nervous pain and suffering.”  
3 (**Exhibit A, Willis Action**, p. 19:27-28.)

4 **UNDERWRITERS’ POLICIES**

5 26. The six (6) Policies issued by Underwriters to URC are substantially identical in  
6 terms of the material terms and provisions at issue here.

7 27. The Policies are subject to per occurrence and aggregate limits of liability, e.g.,  
8 \$1M per occurrence/\$2M in the aggregate.

9 28. The Policies’ insuring agreement under Coverage A provides that Underwriters  
10 “will pay those sums that the insured becomes legally obligated to pay as damages because of  
11 ‘bodily injury’ or ‘property damage’ to which this insurance applies.” **Exhibit C**, Form LRS  
12 CG0001C NRA 04 07, Page 1 of 20. The insuring agreement further provides that Underwriters  
13 “have the right and duty to defend the insured against any ‘suit’ seeking those damages[,]” but  
14 that Underwriters “will have no duty to defend the insured against any ‘suit’ seeking damages  
15 for ‘bodily injury’ or ‘property damage’ to which this insurance does not apply.” *Id.*

16 29. In relevant part, the Policies provide coverage for “bodily injury” that is caused  
17 by an “occurrence” that takes place in the “coverage territory” during the policy period. *Id.*

18 30. “Bodily injury” is defined to mean sickness or disease sustained by a person,  
19 including death resulting from any of these at any time. *Id.* at Page 16 of 20.

20 31. The Policies define “occurrence” to mean an accident, including continuous or  
21 repeated exposure to substantially the same general harmful conditions. *Id.* at Page 18 of 20.

22 32. The Policies contain, however, the following “Lead Contamination Exclusion”:

23 This insurance does not apply to:

24 \* \* \*

25 **4. Lead Contamination Exclusion**

- 26 **a.** “Bodily injury,” “property damage” or “personal and  
27 advertising injury” arising out of the actual or alleged or  
suspected:

28 ///

- (1) Ingestion, inhalation, absorption, or prolonged physical exposure or threat of exposure to lead in any form, or goods or products containing any form of lead; or
- (2) Use of any form of lead in constructing or manufacturing any good, product or structure; or
- (3) Removal of any form of lead from any good, product or structure, or from any body of water and/or watercourse, including but not limited to an ocean, lake, estuary or marsh, or any land, and/or soil of any nature whatsoever;
- (4) Manufacture, sale, transportation, storage or disposal of lead or goods or products containing any form of lead; or
- (5) Payment for the investigation or defense of any claim or "suit" or any loss, cost, expense, fine or penalty related to (1), (2), (3), or (4) above.

See **Exhibit C**, Form LRS CG0001C NRA 04 07, Page 9 of 20.

33. The Policies also contain a "Pollution Exclusion," which provides, in relevant part:

This insurance does not apply to:

\* \* \*

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

*Id.* at Page 2-3 of 20.

34. "Pollutants" are defined as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed." *Id.* at Page 19 of 20.

### **FIRST CLAIM FOR RELIEF**

#### **(Declaratory Relief - No Duty to Defend)**

35. Underwriters refer to and incorporate by reference the allegations set forth in the preceding paragraphs as though fully set forth here.

///

///

1           36.     URC tendered the Consolidated Action to Underwriters for defense and  
2 indemnity, and Underwriters agreed to defend URC subject to a full and complete reservation of  
3 rights, including the right to seek reimbursement for defense costs, and the right to withdraw  
4 from the defense if it were to be determined that the Consolidated Action did not give rise to a  
5 potential for coverage under Underwriters' Policies.

6           37.     An actual controversy has arisen between Underwriters and URC in that  
7 Underwriters contend that there is no potential for coverage under the Policies for the claims  
8 asserted in the Consolidated Action and that any duty to defend that may have existed has been  
9 extinguished.

10          38.     The Policies contain a Lead Contamination Exclusion that operates to exclude  
11 coverage for bodily injury arising out of the actual or alleged or suspected exposure or threat of  
12 exposure to lead in any form, among other things.

13          39.     The Policies contain a Pollution Exclusion that operates to exclude coverage for  
14 bodily injury which would not have occurred in whole or part but for the actual, alleged or  
15 threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

16          40.     The Consolidated Action seeks damages for alleged bodily injury arising from  
17 alleged exposure to lead, lead dust, and lead particulates.

18          41.     Plaintiffs in the Consolidated Action have admitted under oath that their alleged  
19 injuries arise solely from exposure to lead, lead dust, and lead particulates.

20          42.     Accordingly, Underwriters are entitled to a judicial declaration that, by operation  
21 of the Lead Contamination Exclusion and/or the Pollution Exclusion, there is no potential  
22 coverage for, nor a duty to defend, the claims asserted in the Consolidated Action under the  
23 Policies, or alternatively that any duty to defend that might have existed has been extinguished,  
24 and that Underwriters may withdraw its defense.

25                   **SECOND CLAIM FOR RELIEF**

26                   **(Declaratory Relief – No Duty to Indemnify)**

27          42.     Underwriters refer to and incorporate by reference the allegations set forth in the  
28 preceding paragraphs as though fully set forth here.



1           43.     URC tendered the Consolidated Action to Underwriters for defense and  
2 indemnity, and Underwriters agreed to defend URC subject to a full and complete reservation of  
3 rights, including the right to deny indemnity, the right to seek reimbursement of defense costs,  
4 and the right to withdraw the defense if it were determined that the Consolidated Action did not  
5 give rise to a potential for coverage under Underwriters' Policies.

6           44.     An actual controversy has arisen between Underwriters and URC in that  
7 Underwriters regarding the duties and obligations of the parties under the Policies regarding the  
8 Consolidate Action.

9           45.     The Policies contain a Lead Contamination Exclusion that operates to exclude  
10 coverage for bodily injury arising out of the actual or alleged or suspected exposure or threat of  
11 exposure to lead in any form, among other things.

12           46.     The Policies contain a Pollution Exclusion that operates to exclude coverage for  
13 bodily injury which would not have occurred in whole or part but for the actual, alleged or  
14 threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

15           47.     The Consolidated Action seeks damages for alleged bodily injury arising from  
16 alleged exposure to lead, lead dust, and lead particulates.

17           48.     Plaintiffs in the Consolidated Action have admitted under oath that their alleged  
18 injuries arise solely from exposure to lead, lead dust, and lead particulates.

19           49.     Accordingly, Underwriters are entitled to a judicial declaration that, by operation  
20 of the Lead Contamination Exclusion and/or the Pollution Exclusion, there is no potential  
21 coverage for the claims asserted in the Consolidated Action under the Policies, and therefore  
22 Plaintiff has no duty to indemnify URC for the claims.

23                   **THIRD CLAIM FOR RELIEF**

24                   **(Reimbursement against URC)**

25           50.     Underwriters refer to and incorporate by reference the allegations set forth in the  
26 preceding paragraphs as though fully set forth here.

27     ///

1           51.     The Consolidated Action alleges causes of action and damages against URC that  
2     were never potentially covered by the Policies.

3           52.     Pursuant to California law, including the California Supreme Court decision in  
4     *Buss v. Superior Court* (1997) 16 Cal.4<sup>th</sup> 35, URC is entitled to recover the amounts paid for the  
5     defends of claims that were not covered by the Policies.

6           53.     Underwriters seek an award of the legal fees and costs incurred in the defense of  
7     URC in the Consolidated Action in an amount to be proven at trial.

8                                 **FOURTH CLAIM FOR RELIEF**

9                                 **(Unjust Enrichment Against URC)**

10          54.     Underwriters refer to and incorporate by reference the allegations set forth in the  
11     preceding paragraphs as though fully set forth here.

12          55.     The payments made by Underwriters for the defense of URC in the Consolidated  
13     Action has conferred a substantial benefit upon URC to the extent the defense related to  
14     uncovered claims and damages.

15          56.     URC was unjustly enriched by Underwriters' payment of defense fees and costs  
16     to defend uncovered claims and damages in the Consolidated Action.

17          57.     It would be inequitable and unjust for URC to retain the amounts paid by, and the  
18     benefits received from Underwriters.

19          58.     Accordingly, Underwriters seeks an award for the full amount of fees and costs  
20     paid by Underwriters to defend URC in the Consolidated Action for which URC was unjustly  
21     enriched in an amount to be proven at trial.

22                                 **PRAYER FOR RELIEF**

23           WHEREFORE, Underwriters pray for judgment against URC as follows:

24           1.     For a declaration that Underwriters have no duty to defend URC against the claims  
25     alleged in the Consolidated Action;

26           2.     For a declaration that Underwriters have no duty to indemnify URC for the claims  
27     alleged in the Consolidated Action;

28     ///

1           3.       For an award in Underwriters' favor and against URC, in an amount to reimburse  
2 Underwriters for the payment of legal fees and costs by Underwriters in the defense of URC in  
3 the Consolidated Action;

4           4.       For Underwriters' costs of suit incurred herein; and

5           5.       For such other and further relief as the Court deems appropriate.

6  
7 DATED: March 6, 2020

Respectfully submitted,

8 BURNHAM BROWN

9  
10 By /s/ *Thomas M. Downey*

11 THOMAS M. DOWNEY

12 SARA J. SAVAGE

13 Attorneys for Plaintiff

CERTAIN UNDERWRITERS

AT LLOYD'S, LONDON

14 4836-2663-9798, v. 1  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28